

**STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL**

2012 ANNUAL REPORT

**OF THE
HOME BUILDER AND HOME BUILDER SALES
REPRESENTATIVE REGISTRATION UNIT
CONSUMER PROTECTION DIVISION
OFFICE OF THE ATTORNEY GENERAL**

**SUBMITTED TO THE
GOVERNOR AND GENERAL ASSEMBLY
OF MARYLAND**

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I. **EXECUTIVE SUMMARY**

2012 marked the 11th year of operation of the Maryland Home Builder Registration Act (“the Act” or “HBRA”), enacted by the General Assembly in the 2000 Session. The HBRA protects new home buyers by requiring builders to register with the State and by providing an enforcement mechanism that allows the State to prevent builders with a bad track record from continuing to build in Maryland.¹ During the 2008 Session, the General Assembly enacted legislation to provide additional protections for home buyers, establishing a registration requirement for sales representatives for Maryland home builders and a Home Builder Guaranty Fund.

The Home Builder and Home Builder Sales Representative Registration Unit (the “Home Builder Unit” or “Unit”) of the Consumer Protection Division of the Office of the Attorney General was created by the HBRA to administer and enforce the Act.² The Act requires that the Consumer Protection Division make an annual report of its activities to the Governor and General Assembly. This is the eleventh report since the law became fully operational on January 1, 2001.

The report focuses on the following areas:

- **Registration of Builders:** 2,483 builders were registered as of June 30, 2012. 175 of those builders registered for the first time between July 1, 2011 and June 30, 2012.
- **Registration Renewal:** From July 1, 2011 to June 30, 2012, the Unit mailed renewal notices to 1,277 builders whose registrations were due to expire by June 1, 2012. 906 of those builders renewed their registration as of June 30, 2012.
- **Law Enforcement:** The Unit opened 90 investigations between July 1, 2011 and June 30, 2012, after receiving reports of unregistered builders or violations of the Home Builder Registration Act, the Consumer Protection Act, the New Home Warranties Act or violations of the laws governing deposits on new homes. Sixty-eight of the investigations resulted in settlements; enforcement actions have been filed in another eleven; and eleven have been closed or remain under continuing investigation. The Unit receives information from many sources, including consumers, other builders, and permit offices.

¹ Earlier laws provided partial protections for home buyers by focusing on protection of the buyer’s deposit, required contract provisions and disclosures, and prescribed terms of non-mandatory home warranty security plans. See New Home Deposits, Md. Code Ann., Real Property §10-301 through § 10-306, Custom Home Protection Act, Md. Code Ann., Real Property §10-501 through § 10-509, and New Home Warranty Security Plans, Md. Code Ann., Real Property §10-601 through § 10-610.

² Montgomery County and Prince George’s County have varying forms of builder licensing or registration.

● **Education of Builders and Consumers:** As of June 30, 2012, the Unit had distributed a total of 243,992 copies of *BUYING A NEW HOME - Consumer Rights and Remedies Under Maryland Law*; and maintained and updated its website – www.oag.state.md.us/homebuilder – to provide information to the public, consumers, builders, and permit offices about registered builders, building laws, and home building.

● **Coordination with Local Building Permit Offices:** The Unit continues to coordinate with local building permit offices to ensure that unregistered builders cannot obtain building permits and that builders with unresolved building code violations are reported to the Unit. Lists of registered builders are e-mailed and mailed to permit offices each month and are publicly available on the Unit's website. The Unit also coordinates with local permit offices concerning the payment of fees by builders to fund the Home Builder Guaranty Fund.

● **Evaluation of Consumer and Builder Dispute Resolution:** The Division's Mediation Unit handled 154 consumer complaints involving 127 home builders between July 1, 2011 and June 30, 2012. The overwhelming majority of the complaints concerned claims about construction defects.

● **Warranty Programs:** The Unit monitors information from New Home Warranty Security Plans concerning their operation and claims experience to ensure the plans are continuing to meet the requirements of the new home warranty law.

● **Home Builder Sales Representatives:** Effective October 1, 2008, sales representatives for home builders were required to register with the Unit. A home builder sales representative is an individual employed by a home builder as the home builder's representative to consumers regarding the purchase of a new home from the home builder. Sales representatives are required to complete a registration form and pay a \$200 registration fee for a 2-year registration. As of July 1, 2012, there were 581 registered sales representatives, who worked for 336 builders.

● **Home Builder Guaranty Fund:** During the 2008 session, the General Assembly created a Home Builder Guaranty Fund to protect buyers of new homes who purchase a new home from a registered home builder and suffer an actual loss as the result of:

- incomplete construction of a new home;
- breach of an express or implied warranty;
- failure to meet construction standards or guidelines; or
- failure to return a deposit or other payment to which the home buyer is entitled.

The Guaranty Fund applies only to contracts entered into after January 1, 2009. The Division is required to maintain the Guaranty Fund at a level of at least \$1,000,000. The Guaranty Fund is funded through a \$50 fee to be paid by home builders to the permit office together with the application for a permit for a new home. The permit offices remit the fees to the Division monthly and may retain an administrative fee of not more than 2

percent. From July 1, 2011 until June 30, 2012, there were fifty-five claims filed with the Guaranty Fund.

● **Legislation:** During the 2011 Session, the General Assembly enacted the following bills affecting new home builders:

HB 126 (Chapter 101) – Condominiums – Right to Enter to Investigate Damage and Make Repairs: This bill authorizes a council of unit owners or its authorized representative to enter a condominium unit to investigate damage or make repairs when it appears necessary for public safety.

HB 158 (Chapter 356) – Property Tax – High Performing Building Tax Credit – National Green Building Standards: This bill adds residential buildings to the definition of those buildings eligible for the High Performing Building Tax Credit.

HB 177/SB 135 (Chapters 465/464) – Ground Leases – Failure to Register: This bill requires individuals holding ground leases to register with the Department of Assessments and Taxation before they may collect ground rent payments due on the ground lease.

HB 1373 (Chapter 155) – Foreclosed Property Registry: This bill establishes a foreclosed property registry in the Department of Labor, Licensing and Regulation so that local jurisdictions may obtain information about who is responsible for maintaining property that has been foreclosed upon.

SB 236 (Chapter 149) – Sustainable Growth and Agricultural Preservation Act of 2012: This bill establishes four growth tiers based on specified land use characteristics, which may be adopted by local jurisdictions.

.II. REGISTRATION OF BUILDERS

A. THE HOME BUILDER REGISTRATION UNIT

A central requirement of the HBRA is that all new home builders in Maryland register with the Unit. The Home Builder Registration Unit was created by the HBRA to administer and enforce the Act. A special fund was created to fund the Unit's activities, which is paid for through the collection of registration fees. The HBRA sets the initial registration fee paid by builders at \$600 for a two-year registration. The Act further provides for renewal fees for an additional two-year period of \$300 for builders who were issued 10 or fewer building permits during the preceding year and of \$600 for builders who were issued 11 or more permits during the preceding year. HBRA §4.5-203, §4.5-303, §4.5-305. The Division's costs for the Unit include salary, benefits, and administrative costs for a ten person unit; production and distribution of the consumer education pamphlet; continued maintenance of the website and data systems; and perhaps most importantly, enforcement costs. The Unit's ten positions include: a Director/Assistant Attorney General, an Assistant Attorney General who oversees the registration of sales representatives and cases involving the Home Builder Guaranty Fund, an Administrator who oversees builder registration, an Administrator who oversees new home warranty security plans and builder compliance with deposit protection laws, an Administrator who oversees registration of sales representatives and administration of the Home Builder Guaranty Fund, a Staff Attorney responsible for assisting with litigation, two Investigators, and two Secretaries.

B. BUILDER REGISTRATION AND RENEWAL UNDER THE HBRA

The Act establishes a registration procedure that requires builders to complete a registration form and pay the required registration fee. The Act does not provide for competency testing. The Unit has implemented the registration requirements with an objective of making registration an easy and quick procedure.

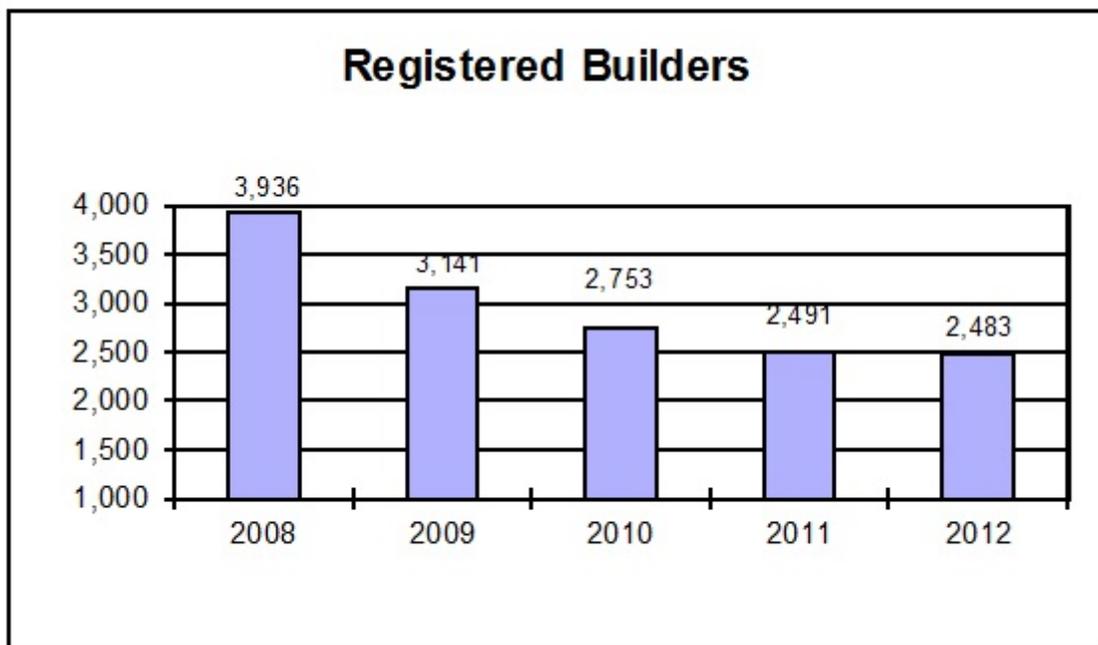
To register, builders are required to complete an application form, provide information about the principals of the company and legal proceedings involving the builder, and pay the registration fee. Each builder's registration lasts two years and expires on one of four quarterly dates based upon the date the builder initially registered: March 1, June 1, September 1, or December 1. Having registrations expire quarterly makes it easier for builders, permit offices, consumers and the Unit to keep track of whether builders are currently registered and when registrations expire. The Unit mails a renewal notice to the builder's last known address at least 60 days before the registration expires.

The application provides the Unit with general information about the company or entity that is registering. It also provides the Unit with information about each "principal" of the company, which the HBRA defines to be persons with at least a 10% ownership interest, and directors, partners, officers and managers of the company. One of the purposes of the Home Builder Registration Act is to track builders who dissolve entities

without meeting their financial obligations and then begin building again under a new company name. Such builders may be subject to denial or revocation of their registration under HBRA §4.5-308. To achieve this goal, the Unit must gather information from the applicants about the principals who own and operate building companies.

As of June 30, 2012, 2,483 home builders were registered with the Unit. 175 new builders registered with the Unit between July 1, 2011 and June 30, 2012.

The following chart shows the number of registered builders reported in the Annual Report since 2008.



Source: HBRU

In the past year, the Unit mailed renewal notices to the 1,277 builders that registered under the HBRA, whose initial two year registrations were due to expire between September 1, 2011 and June 1, 2012. As of June 30, 2012, 906 of these builders have been approved for renewal. 351 builders did not renew their registrations (68 notified the Unit that they were not renewing, 17 withdrew their applications, and 266 did not submit a renewal application). Since January 1, 2005, builders have been able to register and renew their registrations over the Internet. Of the 906 builders that have been renewed, 851 (93%) renewed their registrations over the Internet. However, consistent with the nationwide slowdown in new home building, the overall number of registered builders has continued to decrease since a peak in 2008.

C. WHO ARE MARYLAND'S BUILDERS?

The HBRA defines "home builder" and "new home" broadly to ensure that all new home builders in Maryland must be registered. HBRA §4.5-101(g) and (m). The exceptions to the HBRA are narrowly drawn.³ Information provided by builders in the registration process, combined with other available data, provides the following profile of Maryland Builders:

- **Number of Builders:** There were 2,483 registered builders in Maryland as of June 30, 2012. 175 of those builders registered for the first time between July 1, 2011 and June 30, 2012 and the Unit continues to receive new applications monthly.
- **Type of Construction:** The vast majority of Maryland's builders report building either custom homes (54%) or new homes (31%). Another 6% report building condominiums, 6% report building industrialized buildings, and 3% report selling or installing mobile homes.
- **Form of Business:** 52% of Maryland's builders use corporations as their form of business organization. Another 34% are limited liability companies (LLCs), 13% are sole proprietorships, and 1% are partnerships.
- **Location of Builders and Housing Construction:** Not surprisingly, the majority of Maryland's builders continue to be located in the region of Maryland that is experiencing the most new home building activity, as measured by the number of single family housing permits issued: 79% of building permits for single family construction were issued in the Baltimore-Washington Region, where 52.4% of Maryland's builders are headquartered. 6.3% of building permits were issued in the Eastern Shore Regions, where 19.4% of Maryland's builders are headquartered. The Southern Region had 12.5% of the building permits issued and provided headquarters for 10.6% of Maryland's builders. The Western Region had 2.2% of building permits and provided headquarters for 7.1% of Maryland's builders. 10.4% of builders had headquarters that were out of state.

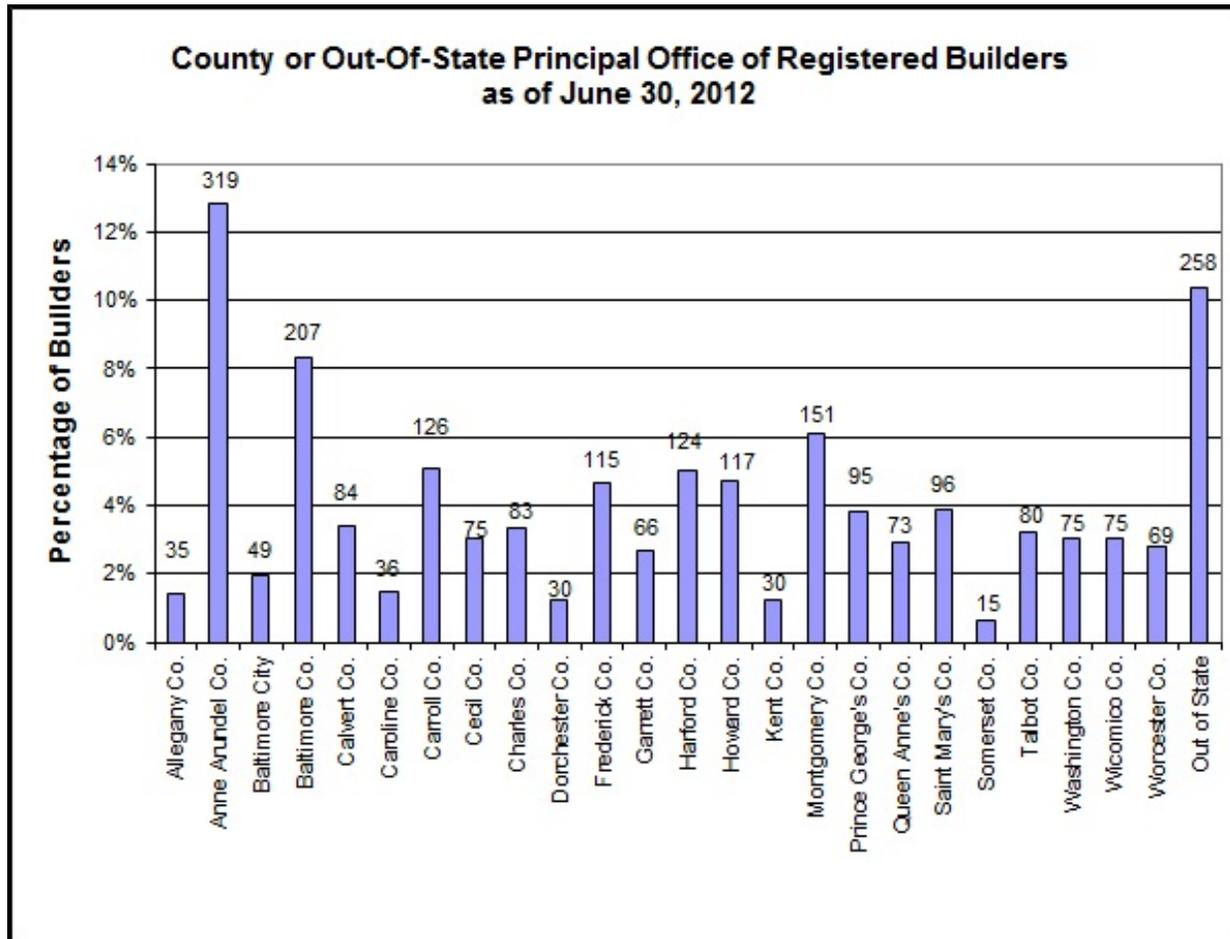
³ The HBRA excludes from registration employees, subcontractors and vendors of a registered home builder; the manufacturer of industrialized buildings unless it also installs the building; real estate developers who do not also contract for or construct homes; construction financiers; and builders who build solely in Montgomery County. HBRA §4.5-101(g)(3). Landowners who obtain building permits in their own name and who directly perform the construction on their own land for their own use are also exempted. HBRA §4.5-601.

The following chart shows the headquarters of builders in each region, the number of single family housing permits issued in each region from July 1, 2011 through June 30, 2012, and the percentage of the total number of single family housing permits issued in Maryland in each region during that period.

Region	Percentage of Builders With Headquarters in Region	Number of Permits Issued in Region (7/1/11 - 6/30/12)	Percentage of State-wide Permits Issued in Region
Baltimore Region (Anne Arundel, Baltimore City, Baltimore County, Carroll, Harford, Howard)	37.9%	5,529	44.6%
Suburban Washington Region (Frederick, Montgomery, Prince George's)	14.5%	4,272	34.4%
Upper Eastern Shore Region (Caroline, Cecil, Kent, Queen Anne's, Talbot)	11.8%	538	4.3%
Southern Region (Calvert, Charles, St. Mary's)	10.6%	1,547	12.5%
Lower Eastern Shore Region (Dorchester, Somerset, Wicomico, Worcester)	7.6%	250	2.0%
Out of State (Delaware, Florida, Illinois, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia, Washington, D.C., West Virginia)	10.4%		
Western Region (Allegany, Garrett, Washington)	7.1%	270	2.2%
Totals	100%	12,406	100%

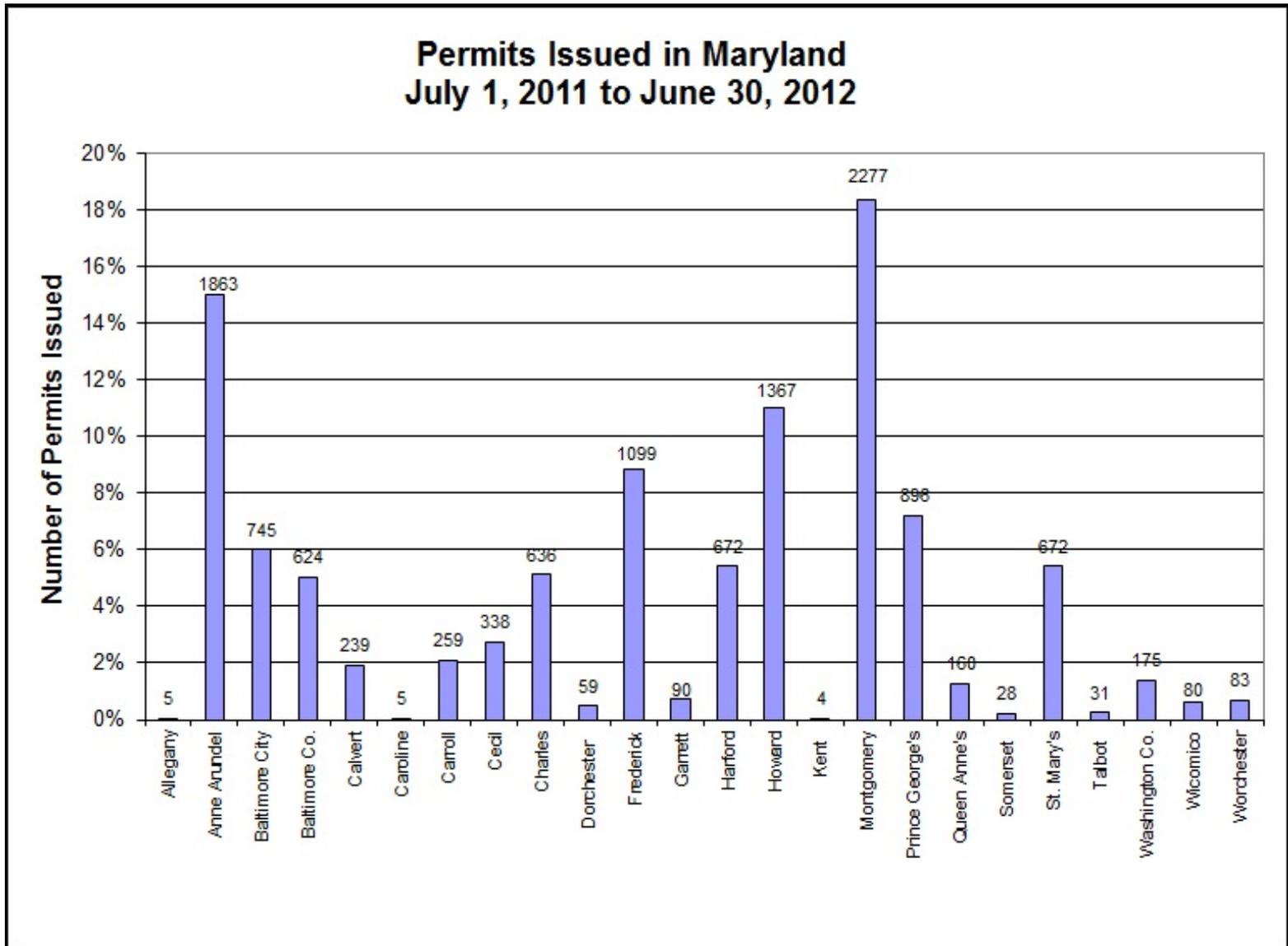
Source: HBRU and Md. Dept. of Planning, for Single Family Permits Issued July 1, 2011 through June 30, 2012

The following graph shows the breakdown of builders' headquarters for each county and how many are out of state.



Source: HBRU

The following chart shows the number of permits issued in each county from July 1, 2011 through June 30, 2012.



Source: Md. Department of Planning data, Dorchester County, Somerset County & Talbot County Permit Authority

III. **HOME BUILDER SALES REPRESENTATIVES**

Effective October 1, 2008, sales representatives for home builders were required to register with the Home Builder Registration Unit. A home builder sales representative is an individual employed by a home builder as the home builder's representative to consumers regarding the purchase of a new home from the home builder. Sales representatives are required to complete a registration form and pay a \$200 registration fee for a 2-year registration.

As of July 1, 2012, there were 581 registered sales representatives, who worked for 336 builders. A registered sales representative may be employed by more than one builder. The Unit issues a Registration Certificate to a registered sales representative, who is required to conspicuously display the Certificate at the location where the sales representative primarily works.

Additionally, home builders are required to disclose to prospective home buyers that the sales representative works for the home builder and that, while the sales representative may assist the buyer in purchasing the property, the sales representative's duty of loyalty is to the home builder.

IV. **LAW ENFORCEMENT**

The Home Builder Registration Act provides an enforcement mechanism with the objectives of (1) keeping unregistered builders from building in Maryland and (2) preventing registered builders who establish a bad track record or engage in violations of the law from continuing to build in Maryland.

To accomplish these objectives, the HBRA prohibits unregistered builders from building and authorizes the Unit to use civil administrative proceedings to seek a cease and desist order and a civil penalty of up to \$1,000 per day of unregistered practice. HBRA §§ 4.5-501 and 4.5-502. In addition, the HBRA provides that the Unit may deny registration to an applicant, reprimand a registrant, suspend or revoke a registration, or impose a civil penalty if the Unit determines that the applicant or registrant has engaged in any of the specified practices stated in HBRA §4.5-308.

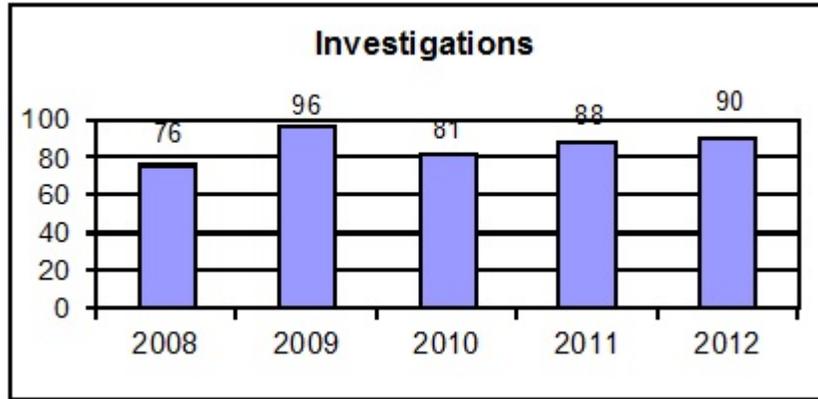
The Unit opened 90 investigations between July 1, 2011 and June 30, 2012 after receiving reports of unregistered builders or violations of the Home Builder Registration Act, the Consumer Protection Act, the New Home Warranties Act or violations of the laws governing deposits on new homes. Sixty-eight of the investigations resulted in settlements; other enforcement actions have been taken in another eleven; and eleven have been closed or remain under continuing investigation. The Unit receives information from many sources, including consumers, other builders, and permit offices. The results of some of these enforcement actions are summarized as follows:

- The Consumer Protection Division issued a Final Order finding that an unregistered Washington County builder entered into contracts with consumers to construct homes in both Charles County and Prince George's County, took deposits and payments toward the construction of the homes, and then failed to complete construction or return the money paid. The Final Order found violations of the Home Builder Registration Act, the Custom Home Protection Act, and the Consumer Protection Act and ordered that the builder and its principals pay restitution of \$282,841.88, economic damages of \$84,883.72, civil penalties of \$12,000.00, and costs of \$4,348.56.
- The Consumer Protection Division issued a Final Order finding that an unregistered Charles County builder entered into contracts with consumers to construct homes, took deposits and payments toward the construction of the homes, and then failed to complete construction or return the money paid. The Final Order found violations of the Home Builder Registration Act, the Custom Home Protection Act, and the Consumer Protection Act and ordered that the builder and its principals pay restitution of \$94,370.59, civil penalties of \$34,500.00, and costs of \$2,966.34.
- The Consumer Protection Division issued a Final Order finding that a Howard County builder violated the Home Builder Registration Act and the Consumer Protection Act by failing to disclose consumer judgments to the Home Builder Registration Unit. The Final Order required the builder and its principal to pay civil penalties of \$3,000.00 and costs of \$1,417.64.
- The Consumer Protection Division issued a Final Order finding that a Worcester County builder violated the Home Builder Registration Act by failing to report a judgment in favor of a consumer to the Home Builder Registration Unit. The Final Order required the builder and its principal to pay civil penalties of \$1,000.00 and costs of \$1,053.37.
- The Home Builder Registration Unit reached a settlement with a Baltimore County builder and its principal whose registration was revoked for entering into contracts with consumers to construct homes, taking deposits and payments toward the construction of the homes, and then failing to complete construction or return the money paid. The Final Order by Consent required the builder to pay the Consumer Protection Division restitution of \$272,651.00, civil penalties of \$10,000.00, and costs of \$1,000.00. In addition, the Final Order by Consent required the builder and its principal to post a performance bond prior to being registered as a home builder and to arbitrate consumer complaints with the Consumer Protection Division's Arbitration Program.

- The Home Builder Registration Unit reached a settlement with a Cecil County builder and its principal for entering into contracts with consumers to construct homes, taking deposits and payments toward the construction of the homes, and then failing to complete construction or return the money paid. The Final Order by Consent required the builder to pay the Consumer Protection Division restitution of \$218,566.00, civil penalties of \$25,000.00, and costs of \$2,500.00. In addition, the Final Order by Consent requires the builder and its principal to post a performance bond prior to being registered as a home builder and to arbitrate consumer complaints with the Consumer Protection Division's Arbitration Program.
- The Home Builder Registration Unit reached a settlement with a Queen Anne's County builder whose registration was suspended for failing to disclose lawsuits, including an unsatisfied tax lien to the Unit. The Final Order by Consent required the builder to comply with all registration requirements prior to being registered, including satisfying the tax lien, and pay a civil penalty.
- The Home Builder Registration Unit revoked the registration of a Delaware builder for violation of the Home Builder Registration Act. The builder failed to satisfy a judgment entered in favor of a consumer in the amount of \$105,385.00 by the Circuit Court for Cecil County.
- The Home Builder Registration Unit revoked the registration of a Baltimore County builder for violation of the Home Builder Registration Act. The builder failed to satisfy a judgment entered in favor of a consumer in the amount of \$22,300.00 by the Circuit Court for Baltimore City.
- The Home Builder Registration Unit revoked the registration of a Wicomico County builder for violation of the Home Builder Registration Act. The builder failed to satisfy a judgment entered in favor of a consumer in the amount of \$18,738.00 by the Circuit Court for Wicomico County.
- The Office of Administrative Hearings issued a Proposed Decision upholding the suspension of a Montgomery County builder's registration whose principals had been the principals of another builder whose registration was revoked for failing to satisfy a consumer judgment.
- The Office of Administrative Hearings issued a Proposed Decision finding that an unregistered Baltimore County builder and its principal entered into a contracts with consumers to construct homes in Baltimore County and then failed to complete construction of the homes, pay subcontractors, or refund any of the money paid. The Proposed Decision found violations of the Home Builder Registration Act, the Custom Home Protection Act, the New Home Deposits Act, and the Consumer Protection Act and recommended that the builder and its principal pay restitution, civil penalties, and costs.

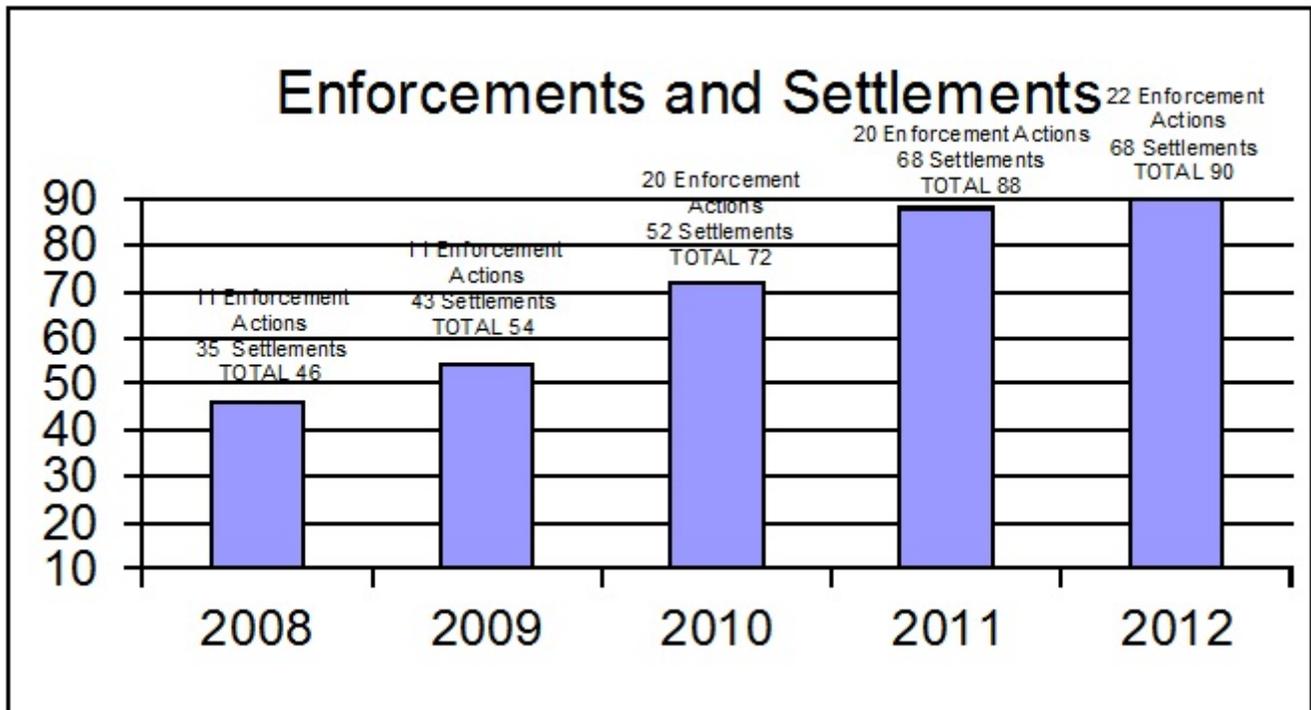
- The Home Builder Registration Unit filed a Statement of Charges seeking injunctive relief, restitution, economic damages, and civil penalties against a Baltimore City builder for contracting to construct homes for two consumers and then failing to begin or complete construction of the homes or return the money paid. The Home Builder Registration Unit alleged that the builder violated the laws governing deposits on new homes by failing to maintain deposit protection for consumers' payments, and violated the Home Builder Registration Act and Consumer Protection Act by failing to begin or complete the homes.
- The Home Builder Registration Unit filed a Statement of Charges seeking injunctive relief, restitution, economic damages, and civil penalties against a Carroll County builder for contracting to construct homes for consumers and then failing to complete construction of the homes or return the money paid. The Home Builder Registration Unit alleged that the builder violated the laws governing deposits on new homes by failing to maintain deposit protection for consumers' payments, and violated the Home Builder Registration Act and Consumer Protection Act by failing to begin or complete the homes.
- The Home Builder Registration Unit entered into Assurances of Discontinuance with sixty-five builders to settle allegations that the companies acted as home builders without having registered with the Unit in violation of the Home Builder Registration Act or engaged in other violations. The companies brought their registrations into compliance, agreed to penalties totaling \$51,000.00, and agreed to submit any complaints that cannot be resolved through mediation to binding arbitration through the Division's Arbitration program. The builders were located in Anne Arundel, Baltimore, Calvert, Charles, Frederick, Howard, Montgomery, Prince George's, Queen Anne's, St. Mary's, Talbot, Washington, Wicomico, and Worcester Counties.

The following chart shows the number of Investigations reported in the Annual Reports since 2008.



Source: HBRU

The following chart shows the number of Enforcement Actions reported in the Annual Reports since 2008.



Source: HBRU

V. COMMUNICATION WITH BUILDERS AND CONSUMERS**A. OUTREACH TO BUILDERS**

The Unit has continued to correspond with builders to keep them updated about issues affecting them. The Unit provides builders with two months' notice that their registrations will be expiring and provides them with the information and forms they will need to renew their registrations. The Unit also handled numerous builder inquiries by phone and by e-mail about the Home Builder Registration Act's registration and renewal processes and corresponded with builders about the requirements of the amendments to the law.

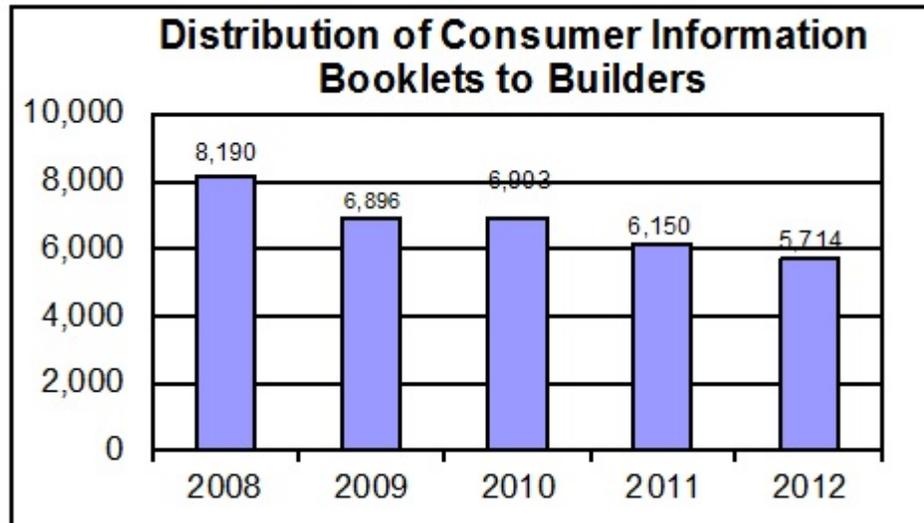
B. CONSUMER EDUCATION PAMPHLET

The HBRA requires that the Unit develop a consumer information pamphlet describing the rights and remedies of consumers in the purchase of a new home and providing any other information that the Division considers reasonably necessary to assist consumers in the purchase of a new home. The law further requires that the consumer information pamphlet be given to consumers by builders before they sign a contract to purchase a new home and that the receipt of the consumer information pamphlet be acknowledged in writing. HBRA §4.5-202(c).

The Unit consulted with the industry, and initially developed and published a consumer education pamphlet, *BUYING A NEW HOME - Consumer Rights and Remedies Under Maryland Law*. The Unit also drafted and distributed a model form for the consumer to sign to acknowledge receipt of the pamphlet. The Unit regularly updates the pamphlet to reflect changes to the law. A copy of the revised pamphlet is available on our website at www.oag.state.md.us/homebuilder.

As of June 30, 2012, the Unit had distributed a total of 243,992 consumer information pamphlets to builders. Between July 1, 2011 and June 30, 2012, the Unit distributed 5,714 pamphlets to builders.

The following chart shows the number of Consumer Information Booklets distributed to Builders since 2008.



Source: HBRU

C. HBRU WEBSITE

The Home Builder Registration Unit has maintained and updated its website to make information readily available to consumers, builders, and permit offices. The website has been operational since January 2001, and is updated regularly as information changes. Because the website can be accessed by anyone with Internet access, it is a significant mode of outreach and is an educational resource for both consumers and builders. The website provides consumers, permit offices and others the ability to search for builders either by the name of the builder or by registration number. The website address is www.oag.state.md.us/homebuilder. The following can be found on the website:

- Information about the Home Builder Registration Unit, the Home Builder Registration Act, and the responsibility of builders and sales representatives pursuant to the Act.
- A list of currently registered builders that can be searched either by builder name or by registration number.
- Registration materials, including all the registration forms; builders and sales representatives are able to register and renew their registrations over the Internet.
- The Home Builder Registration Act and other applicable laws, and updates to those laws.

- The consumer information pamphlet developed by the Home Builder Registration Unit, *BUYING A NEW HOME - Consumer Rights and Remedies Under Maryland Law*.
- The Builder's New Home Disclosure Form.
- A sample Surety Bond and Letter of Credit that builders can use for the protection of consumer deposits.
- Previous Annual Reports of the Home Builder Registration Unit.

VI. COORDINATION WITH LOCAL PERMIT OFFICES

Permit offices play a pivotal role in implementing the Home Builder Registration Act. First, the building and permits department of a county may not issue a permit for home building unless the permit includes the home builder registration number of a registrant. HBRA § 4.5-601. This is the critical first line of defense against unregistered builders. Second, local permit offices are required to notify the Unit about any builder who fails to correct a building code violation within a reasonable period of time.

The Unit has communicated regularly with the 42 local and municipal permit offices across the state. The Unit continues to e-mail and send out printed copies of the lists of registered and expired builders to local permit offices on a monthly basis and communicates with them regularly. Additionally, permit offices are encouraged to check the Unit's website to find out if a builder applying for a permit is registered. The Unit also coordinates with local permit offices regarding the payment of fees by builders to fund the Home Builder Guaranty Fund.

VII. EVALUATING CONSUMER AND BUILDER DISPUTE RESOLUTION

Between July 1, 2011 and June 30, 2012, the Mediation Unit of the Consumer Protection Division handled 152 written consumer complaints filed against 147 different home builders. When a consumer complaint is filed with the Consumer Protection Division, a mediator from the Mediation Unit contacts both the builder and consumer and assists them in resolving their dispute. A mediated agreement is possible only if both parties can agree upon mutually acceptable terms. A mediation is considered successful if it results in an agreement. The Division also offers arbitration at no cost to the parties if the builder and consumer are unable to resolve the complaint through mediation and both the builder and consumer agree to submit their dispute to arbitration. Effective January 1, 2009, consumers who are unable to resolve their complaints through mediation are able to submit to the Home Builder Guaranty Fund claims for the costs of restoration, repair, replacement

or completion that arise from the incomplete construction of a new home, a breach of warranty, or the failure to return a deposit or other payment that is due the consumer.

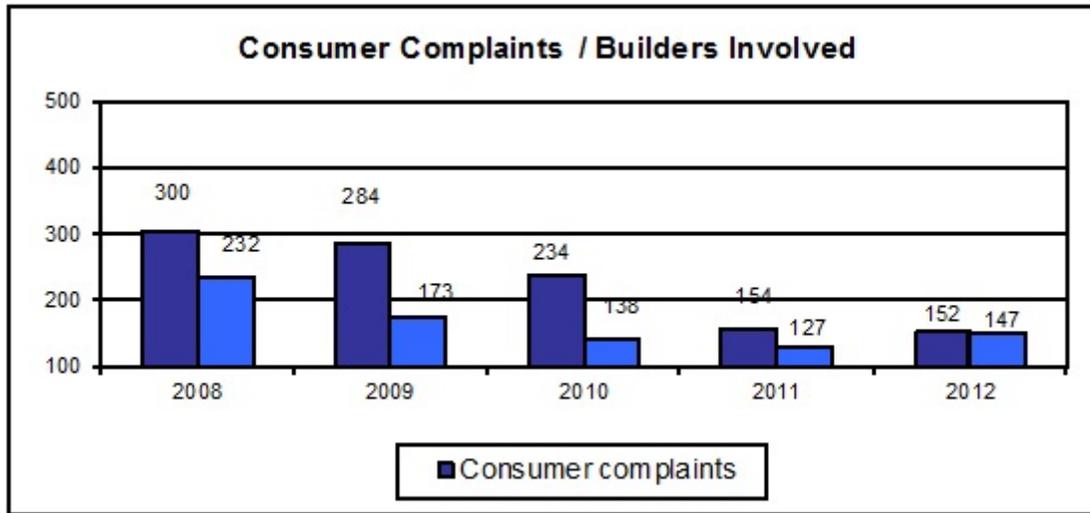
Of the complaints received by the Division's Mediation Unit, 61.4% of the complaints were mediated; 4.0% were filed for information only; 3.4% were resolved by the consumer; 2.3% were closed after the Division provided advice to the consumer; 2.8% were referred to other agencies having jurisdiction; 3.4% were arbitrated; and 22.8% had other miscellaneous resolutions. Thirty percent (30%) of the complaints mediated by the Division resulted in positive relief for consumers, such as the defects being corrected by the builder or money being paid to the consumer. The total amount of money or savings obtained for consumers in these complaints was \$55,573.

The 152 written complaints raised the following issues:

- *Construction Defect Issues* (90);
- *Incomplete Construction* (21), including disputes between the builder and owner about whether construction has been completed;
- *Misrepresentation Claims* (15), including claims that the finished home was not constructed in the manner promised by the builder.
- *Deposit Issues* (11), including consumers seeking return of their deposits after being denied financing or withdrawing from their contracts for other reasons.
- *Warranty Issues* (9); and
- *Contract Disputes* (6).

Consumers also filed complaints against builders with the Montgomery County Office of Consumer Protection and with the Howard County Office of Consumer Affairs. Between July 1, 2011 and June 30, 2012, there were 15 complaints filed in Montgomery County. In Howard County, 5 were handled during this period.

The following chart shows the number of Consumer Complaints and the Number of Builders Involved in those complaints by year since 2008.



Source: HBRU

VIII. WARRANTY PROGRAM

During the 2002 Session, the Maryland General Assembly enacted Chapter 492, which transferred responsibility for New Home Warranty Security Plans from the Department of Labor, Licensing and Regulation to the Home Builder Registration Unit. There are seven third party warranty plans approved for operation in Maryland. The Unit requests information from each plan concerning their operations and claims experience to monitor compliance with the requirements of Maryland law.

In 2011, the seven approved plans reported a total statewide enrollment of 107,715 homes. Also, in 2011 the warranty plans enrolled 3,395 new homes, generating \$2,015,750 in revenue. The plans reported a total of 258 consumer claims for warranty coverage in 2011 with 99 claims approved for coverage and 159 of the claims being denied. The warranty plans determined that 40 approved claims were resolved without action by the plan. The warranty plans settled the remaining 59 approved claims by making payments to the consumers.

New Home Warranty Security Plans are required to notify the Home Builder Registration Unit of each decision to deny warranty coverage for a claim or any part of a claim. From July 1, 2011 to June 30, 2012 the Unit has received notice of 81 denied warranty claims. From the same time period, the warranty plans provided notice that 6 claims for coverage were accepted or partially accepted. The claims that were denied are categorized with the plan’s response as follows:

- Structural Defects (46), including the plan's claim that the defect did not meet the plan's definition of a structural defect (44), warranty coverage expired (1), and defect is excluded by plan (1);
- Material/Workmanship Defects (30), including warranty coverage expired (27), and defect is excluded by plan (3);
- Equipment/Appliance/Fixture Defects (2), including warranty coverage expired (2);
- Plumbing/Electrical/HVAC (3), including warranty coverage expired (3).

Table of Reported Claims

Type of Claim	Claims Denied in FY 2009	Claims Denied in FY 2010	Claims Denied in FY 2011
Structural Defects	53	32	46
Material/Workmanship Defects	45	35	30
Equipment/Appliance/Fixture Defects	1	0	2
Plumbing/Electrical/HVAC Defects	6	7	3

IX. HOME BUILDER GUARANTY FUND

During the 2008 session, the General Assembly created a Home Builder Guaranty Fund to protect consumers who purchase a new home from a registered home builder and suffer an actual loss as the result of:

- incomplete construction;
- breach of an express or implied warranty;
- failure to meet construction standards or guidelines; or
- failure to return a deposit or other payment to which the home buyer is entitled.

The Guaranty Fund applies only to contracts entered into after January 1, 2009.

The Division is required to maintain the Guaranty Fund at a level of at least \$1,000,000. The Guaranty Fund is funded through a \$50 fee to be paid by home builders to the permit office together with the application for a permit for a new home. In the case of a multi-family dwelling, such as a condominium, the Guaranty Fund fee must be paid for each unit to be constructed. The permit offices remit the fees to the Division monthly and

may retain an administrative fee of not more than 2 percent. The balance in the Guaranty Fund is currently maintained in an amount consistent with the statutory requirement.

Claims against the Guaranty Fund are limited to not more than \$50,000 to one claimant or not more than \$300,000 to all claimants against a single registered builder. If a consumer is awarded payment from the Guaranty Fund, the builder's registration is suspended until the Guaranty Fund has been repaid.

Under the Guaranty Fund law, consumers and builders are encouraged to resolve any issues voluntarily before a claim against the Guaranty Fund can proceed. First, consumers must give the builder notice and an opportunity to remedy any defects with the new home. Second, if the consumer is still not satisfied, the Division's Mediation Unit will attempt to resolve the matter through mediation between the consumer and the builder. If the Division's mediation efforts are unsuccessful, the consumer may proceed with a claim against the Guaranty Fund.

From July 1, 2011 until June 30, 2012, there were fifty-five claims filed with the Guaranty Fund.

- Of those claims, four were settled through mediation with consumers receiving awards in the amounts of \$3,000.00, \$2,400.00, and \$1,500.00. One claim was settled without the consumer receiving an award. Four additional claims are currently in mediation.
- Two claims were referred to arbitration. One resulted in an award in the amount of \$10,000.00 to the consumer and the other is pending a decision by the arbitrator.
- Fourteen claims were scheduled for hearings at the Office of Administrative Hearings. Two of the fourteen claims were dismissed after being confidentially settled by the consumer and builder prior to the hearing. Four other claims settled either prior to or at the hearing; in two claims the builder agreed to correct defective work; in the other two the builder made refunds to the consumers in the amounts of \$13,780.50 and \$750.00. One claim settled during the course of the hearing with the builder agreeing to refund \$25,000.00 to the consumer. Two claims are in various stages of the hearing; in one claim, the hearing was continued and has not been concluded; and a hearing on exceptions is pending in the other. A Final Order was issued in another claim which denied guaranty fund relief to the claimant based on his failure to establish an actual loss that was recoverable from the Guaranty Fund. Another was dismissed by the Administrative Law Judge, finding that the consumer failed to exhaust his new home security plan prior to filing the guaranty claim and three claims are pending Final Orders by the Consumer Protection Division.
- Four cases, which were consolidated with an enforcement action by the Division, were settled by a Final Order by Consent with the builder that enabled the consumers to recover from the Guaranty Fund.

- Another claim was settled pursuant to an Assurance of Discontinuance with the builder.
- Eleven claims are being scheduled before the Office of Administrative Hearings and seven remain in investigation.
- Eight claims were determined not to be eligible for relief from the Guaranty Fund.

X. **LEGISLATIVE CHANGES**

During the 2012 legislative session, the General Assembly enacted the following laws affecting home builders:

HB 126 (Chapter 101) – Condominiums – Right to Enter to Investigate Damage and Make Repairs: This bill authorizes a council of unit owners or its authorized representative to enter a condominium unit to investigate damage or make repairs when it appears necessary for public safety or to prevent damage to other portions of the condominium. The council of unit owners is required to make reasonable efforts to provide notice to the unit owner. Effective October 1, 2012.

HB 158 (Chapter 356) – Property Tax – High Performing Building Tax Credit – National Green Building Standards: This bill adds residential buildings to the definition of those buildings eligible for the High Performing Building Tax Credit if the building achieves at least a silver rating. The bill is applicable to tax years after June 30, 2012.

HB 177/SB 135 (Chapters 465/464) – Ground Leases – Failure to Register: The bill requires individuals holding ground leases to register with the Department of Assessments and Taxation before they may collect ground rent payments due on the ground lease but does not extinguish the ground lease if the holder does not register the lease. A ground lease holder is not entitled to collect ground rent while the ground lease is unregistered, but may collect up to three years back rent upon registration. Effective July 1, 2012.

HB 1373 (Chapter 155) – Foreclosed Property Registry: This bill establishes a foreclosed property registry in the Department of Labor, Licensing and Regulation so that local jurisdictions may obtain information about who is responsible for maintaining property that has been foreclosed upon. The bill also provides that the local jurisdiction may provide limited information about the foreclosed property to homeowners on the same block or to a homeowners or condominium association in which the foreclosed property is located. Effective October 1, 2012.

SB 236 (Chapter 149) – Sustainable Growth and Agricultural Preservation Act of 2012: This bill establishes four growth tiers based on specified land use characteristics,

which may be adopted by local jurisdictions. Beginning December 31, 2012, a jurisdiction may not authorize a residential major subdivision served by on-site sewage disposal systems, community sewerage systems, or shared systems unless it adopts growth tiers consistent with the bill. A jurisdiction that does not adopt a growth tier may authorize either a residential minor subdivision served by on-site sewage disposal systems, or any subdivision in a "Tier I" area served by "public sewer." The bill establishes land use and sewerage criteria and restrictions applicable to each of the four tiers. Property within residential minor subdivisions is generally restricted from further subdivision beginning December 31, 2012. The bill establishes numerous exceptions from and conditions upon these restrictions, and it allows for the transfer of subdivision rights among specified agricultural property owners. The bill generally takes effect July 1, 2012; however, certain provisions are contingent on the passage of House Bill 1290 (creating a new Land Use Article of the Maryland Annotated Code) and takes effect when that bill takes effect on October 1, 2012.